

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,	x	
Plaintiff,	:	Case No. 19-7166CF10A
	:	
	:	
v.	:	
	:	
SCOT RALPH PETERSON,	:	
Defendant.	:	
	x	

MOTION TO REDUCE BOND
& MODIFY THE CONDITIONS OF PRETRIAL RELEASE

COMES NOW, the Defendant, SCOT RALPH PETERSON, by and through the undersigned attorney, pursuant to Florida Rules of Criminal Procedure and the Florida Constitution, and moves this Honorable Court to reduce bond and modify the conditions of pretrial release in the above styled case. In support thereof the Defendant states as follows.

I. PROCEDURAL HISTORY & BACKGROUND

On June 3, 2019, an eleven-count arrest warrant was issued asserting the following counts: Counts 1-7 Neglect of a Child in purported violation of Fla. Stat. §§ 827.01 & 827.03, Counts 8-10 Culpable Negligence in purported violation of Fla. Stat. § 784.05(1), and Count 11 Perjury When Not In An Official Proceeding in purported violation of Fla. Stat. § 837.012.

Additionally, on June 3rd the Court entered an order setting bond in the amount of \$102,000.00 (Counts 1-6 have a bond of \$15,000.00 per count, Count 7 has a bond of \$7,500.00, Counts 8-10 have a bond of \$1,000.00 per count, and Count 11 has a bond of \$1,500.00). The following special conditions were also imposed:

1. In addition the Defendant shall be on Level II pretrial release with a GPS monitor.
2. In addition the bond shall be collateralized with real estate and/or tangible personal property having a net asset value in excess of \$102,000.00.
3. The Defendant will not possess any firearms.
4. The Defendant shall surrender his passport and it shall remain in the custody of the Broward County Clerk and the Defendant shall not reapply for any passport.

Notwithstanding that the Defendant was a long-time BSO officer (with no criminal history), and notwithstanding that the State knew that the Defendant was represented by counsel, instead of allowing him to self-surrender the Defendant was arrested on June 4th.

Further, the Defendant's actions on February 14, 2018 were completely consistent with the Broward Sheriff's Office ("BSO") Department of Law Enforcement Standard Operating Procedures 4.37.2 Active Shooter policy regarding Response/Responsibilities. Attached as Exhibit 1 is a true and correct copy of the BSO Standard Operating Procedures. The SOP 4.37.2(C) provided that: "[i]f real time intelligence exists the sole deputy or a team of deputies may enter the area and/or structure to preserve life." Ex. 1 at p. 2 (emphasis added).

II. APPLICABLE LAW

Under Florida law, the criminal offense of "[n]eglect of a child" occurs upon the following:

1. A *caregiver's failure or omission* to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
2. A *caregiver's failure* to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Fla. Stat. § 827.03(1)(e) (emphasis added). A "[c]aregiver" means a parent, adult household member, or other person responsible for a child's welfare." Fla. Stat. § 827.01(1). The definition

of “other person responsible for a child’s welfare” expressly excludes law enforcement officers acting in an official capacity. See Fla. Stat. § 39.01(54) (“*this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection...*”) (emphasis added).

III. ARGUMENT

A. The Defendant Cannot Be Prosecuted Under Fla. Stat. § 827.03

Florida law explicitly excludes the Defendant, in his role as school resource officer, from consideration as a “caregiver.” While Peterson is undeniably not “a parent” or “adult household member,” the only remaining category of individual under the statute who might qualify as a “caregiver” is an “other person responsible for a child’s welfare.” Fla. Stat § 827.01(1). However, Fla. Stat. § 39.01(54) explicitly defines “[o]ther person responsible for a child’s welfare” to “*not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection*” (emphasis added). *Accord* Ex. 1 (allowing for permissive confrontation of an active shooter, but no requirement to do so). Consequently, the Defendant cannot be prosecuted under this statute.

However, if the statutory definition were not enough (and it is) “[T]here is nothing vague or ambiguous about the phrase ‘other person responsible for a child's welfare.’ Thus, because the statute's language is clear and unambiguous, the statute must be given its ‘plain and obvious meaning.’ *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984).” *State v. Christie*, 939 So. 2d 1078, 1079 (Fla. 3d DCA 2005). Both the common understanding and the statutory context of “caregiver” clearly implicate the direct oversight role required of a “caregiver.” This requirement is explicitly

embodied in the common-sense definition, provided by Merriam-Webster: “**Definition of caregiver:** a person who provides direct care (as for children, elderly people, or the chronically ill).” <https://www.merriam-webster.com/dictionary/caregiver>. And, through its context, the statute presupposes that a “caregiver” is charged with the broad responsibility to “maintain the child’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child[.]” Fla. Stat. § 827.03(1)(e). This naturally suggests parents, legal guardians, and babysitters because each is charged with the direct maintenance of a child’s welfare over an extended period of time.

Consistent with this straight-forward understanding, the Court of Appeals for the Third District “conclude[d] that a teacher falls within the plain meaning of ‘caregiver’ during school hours as that word is defined in section 827.01(1).” *Christie*, 939 So. 2d at 1079. That court determined that, during the time that teachers are directly responsible for the supervision and oversight of the students entrusted to their care, they qualify as the “caregivers” of such children. In other words: “teachers stand *in loco parentis* to the students during school hours.” *Id.* And, it follows, “a person who stands *in loco parentis* to a child during school hours must obviously be deemed a ‘person responsible for the child’s welfare’ under section 827.01(1).” *Id.* at 1080.

Other courts, too, have found that it is when an individual has wide-ranging responsibilities of overseeing and supervising children to provide for their well-being, such individuals qualify as “caregivers” under the statute. See *Durand v. State*, 820 So. 2d 381, 382 (Fla. 5th DCA 2002) (upholding determination of “caregiver” “[g]iven [the defendant’s] position in the household and

the evidence of his involvement in the supervision and direction of the child”); *see also State v. Nowlin*, 50 So. 3d 79, 83 (Fla. 1st DCA 2010) (finding that the State made a *prima facie* showing that the defendant was “responsible for a child’s welfare” because “[the defendant] regularly, if not daily, took care of the two-year-old victim while the mother was at work, and was entrusted with and responsible for the child’s care and welfare during those times.”) A showing that an individual is “responsible for a child’s welfare” is necessary “to establish a defendant’s status as a caregiver under section 827.01(1)”. *Nowlin*, 50 So. 3d at 83.

There is no conceivable explanation for how Peterson, a uniformed police officer serving as the school resource officer at Marjory Stoneman Douglas High School, could qualify as a “caregiver” under the statute. For Peterson to have been a “caregiver,” he would have been responsible for the general well-being of each of the seven children for whom he was charged with “Neglect of a Child.” He would have been required, under the law, to “provide [each] child with the care, supervision, and services necessary to maintain the child’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child[.]” Fla. Stat. § 827.03(1)(e). The State’s legal theory cannot withstand any serious legal scrutiny.

If, however, any doubt exists as to Peterson qualifying as a “caregiver” under the statute, the rule of lenity requires that doubt to be resolved in favor of the defendant. “The rule of lenity is an interpretive canon that may be expressed as follows: ‘Ambiguity in a statute defining a crime or imposing a penalty should be resolved in the defendant’s favor.’” *Mohamed v. Comm’r*, T.C. Memo. 2013-255, 2013 WL 5988943, at *10 (U.S. Tax Ct. 2013) (citing Antonin Scalia & Bryan A.

Garner, *Reading Law: The Interpretation of Legal Texts*, 296 (2012)). The U.S. Supreme Court has explained the importance of the rule of lenity and has repeatedly

reaffirmed, ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity. In various ways over the years, we have stated that when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.

United States v. Bass, 404 U.S. 336, 347 (1971) (cleaned up).

This principle is founded on two policies that have long been part of our tradition. First, a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so fair as possible the line should be clear. Second, because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity.

Id. at 348.

Here, common sense as well as the plain meaning, context, and underlying rationale of the statute clearly rule out Peterson as a criminally liable “caregiver.” Moreover, if, incredibly, it is determined that some ambiguity could possibly impose criminal liability on Peterson as a “caregiver,” such an ambiguity would surely fall within the ambit of the rule of lenity, which would forbid imposing criminal liability as a “caregiver” on Peterson.

Accordingly, based on the foregoing the Court should vacate the bond amounts on Counts 1-7, reduce the amount to zero, and release the Defendant on his own personal recognizance. Further, all of the special conditions should likewise be vacated *in toto*.

B. The Bond & Conditions Are Excessive

It is well settled that excessive bond is tantamount to no bond, and that an appellate court

will grant relief where the petitioner shows that the amount of bond set is unreasonable under the circumstances. See *Luyao v. Mascara*, 815 So. 2d 748 (Fla. 4th DCA 2002); *Brazil v. Jenne*, 755 So. 2d 784 (Fla. 4th DCA 2000). When considering bail in a criminal proceeding, this Court is to weigh the factors set for in Fla. Stat. § 903.046. The purpose of bail is to insure the Defendant's appearance in court and to protect the community against unreasonable danger from the criminal defendant. Fla. Stat. § 903.046(1). When considering the enumerated factors in Fla. Stat. § 903.046(2)(a)-(m), the facts militate in favor of eliminating (or in the alternative greatly reducing) the bond amount and vacating the special conditions.

First, the nature of the offenses are not of violence, drug trafficking, nor sexual exploitation. The weight of the evidence, given the State's dubious legal position, *see discussion supra*, is minimal. The Defendant has strong ties to the community as he was employed by BSO for decades. Further, he has only recently relocated to North Carolina and he still has close family and friends in South Florida. In this case the bond amount is excessive given that Mr. Peterson is not a danger to the community, and he has always returned to Broward County for hearings and depositions in related MSD shooting civil litigation. There is no allegation of the use of illegal funds, nor that there are other pending criminal proceedings, nor that the Defendant will intimidate witnesses. Accordingly, the Court should release the Defendant on his own recognizance. In the alternative, the Court should lower the bond to an amount that is appropriate under the circumstances.

Second, given that Mr. Peterson no longer lives in South Florida¹ the special bond conditions

¹ To the extent that such a concession is even necessary, the Defendant will officially waive any rights he may have under federal and state law regarding extradition. This concession, while absolutely unnecessary, will obviate any concerns the State may have that when Mr. Peterson is absent from

are both unwarranted and operate to be tantamount to a no-bond hold. Such is the case as a Level II pretrial release requires a residence within South Florida, a condition that the Defendant clearly cannot meet. Further, upon information and belief, GPS monitoring is not available outside of Florida. Accordingly, the Court should vacate the first special condition of pretrial release.

Third, in respect to the second special condition, such should be modified to allow the Defendant (to the extent that any bond is necessary, a point we do not concede) to post non-tangible personal property (e.g. funds located in bank accounts, brokerage accounts, savings accounts, etc.) as an alternative to real estate and/or tangible personal property.

Fourth, given that Mr. Peterson is a former law enforcement officer, depriving him of his 2nd Amendment right serves no purpose (this is especially so given the nature of the allegations do not include any threat of physical violence).

Fifth, as the Defendant's passport is currently located in North Carolina the Defendant will need to return to North Carolina to obtain his passport from the safety deposit box where it is located. The Defendant requests that the fourth condition be vacated or, in the alternative, that he be allowed one week from the date of his release to provide his passport to the undersigned who will, in turn, surrender it to the Clerk of Court.

CONCLUSION

If there ever was a criminal defendant who qualifies to be released on his own recognizance it is Mr. Peterson. There can be no reasonable contention that as a former law enforcement officer he is a danger to the community or that he will fail to appear before this Court at all hearings.

Florida the Defendant will not return to be present at all court-mandated appearances.

WHEREFORE, the Defendant, respectfully requests this Honorable Court to release him on his own recognizance and vacate the special conditions of pretrial release.

Respectfully submitted,

/s/ Joseph A. DiRuzzo, III

Digitally signed by /s/ Joseph A. DiRuzzo, III
Date: 2019.06.05 13:22:49 -04'00'

June 5, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically served to the Office of the State Attorney, 17th Judicial Circuit, Broward County, Florida, this 5th day of June, 2019.

/s/ Joseph A. DiRuzzo, III

Digitally signed by /s/ Joseph A. DiRuzzo, III
Date: 2019.06.05 13:23:06 -04'00'

Joseph A. DiRuzzo, III

EXHIBIT 1

**DEPARTMENT OF LAW ENFORCEMENT
STANDARD OPERATING PROCEDURES**

4.37 ACTIVE SHOOTER

4.37.1 Definitions:

- A. Active Shooter: One or more subjects who participate in a random or systematic shooting spree and who demonstrates the intent to continuously inflict death or great bodily harm onto others. This includes anyone who uses a firearm or other type of deadly weapon (i.e. knife, explosives)
- B. Real Time Intelligence: Deputy(s) personal observation of people fleeing, gunfire etc. provides awareness of an on-going Active Shooter situation.
- C. Deputy Response Team: A deputy or a team of deputies who while on scene have "real time intelligence" and make the decision to enter the area/structure of the active shooter with the goal of stopping the threat.
- D. Extraction Team: A team consisting of deputies with the ability to enter the area/structure and either remove a victim to a casualty collection point (CCP) or provide first aid in place. The purpose of the Extraction Teams is to provide first aid in the area/structure or move victims to a casualty collection point prior to the arrival of fire rescue paramedics.
- E. Rescue Task Force: A team consisting of deputies and fire rescue paramedics with the ability to enter the area/structure. The purpose of the Rescue Task Force (RTF) is to provide advanced emergency first aid to victims of an active shooter event as quickly as possible in the area/structure.
- F. Hot zone: The current location of the subject in the area/structure
- G. Warm zone: Where the subject was previously in the area/structure
- H. Cold zone: A location away from the area/structure. The cold zone may include staging areas, the CCP, and Incident Command Post (ICP).

4.37.2 Response/Responsibilities:

- A. Upon recognizing an active shooter situation the deputy on scene will immediately notify Communications.
- B. Communications will immediately notify SWAT.

Reviewed: 02/24/2016

Revised: 03/14/2016

Rescinds: 11/01/2013

Effective: 03/28/2016

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- C. If real time intelligence exists the sole deputy or a team of deputies may enter the area and/or structure to preserve life. A supervisor's approval or on-site observation is not required for this decision.
- D. The Deputy Contact Team will continue until one of these objectives has been met:
1. The subject/s has been forced into a surrender.
 2. The subject/s has been forced into a barricade.
 3. The subject/s hostilities have been stopped.
 4. The Deputy Contact Team is relieved by SWAT personnel.
- E. Extraction Team Responsibilities: (Consists of LE members only)
1. Locate victims
 2. Provide appropriate first aid
 3. Remove victims to the casualty collection point (CCP)
 4. Area of operations for the Extraction Team may include warm and cold zones.
- F. Rescue Task Force Responsibilities: (Consists of LE and FR members)
1. Locate victims
 2. Provide advanced emergency first aid and triage
 3. The RTF may remove a victim from the area/structure or request an extraction team.
 4. Area of operations for the RTF may include the warm zone and cold zones.
- G. If the situation turns to a barricade or hostage situation the response team will contain, isolate, communicate and wait for SWAT.
- H. Patrol Sergeant/Supervisor's Responsibilities:
1. Respond to the scene

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2. Identify who entered the structure and where they entered
3. Summon any additional resources
4. Coordinate the inner and outer perimeters
- I. Incident Commander (IC) Responsibilities:
 1. Establish a command post with Fire Rescue.
 2. Ensure proper notifications are made.
 3. Establish a CCP for Fire Rescue and Emergency Services.
 4. Establish a staging area for Aviation/Medical Evacuation.
 5. Establish an evacuation/holding area for all removed subjects
 6. Establish a PIO/Media staging area
 7. Once the Active Shooter is stopped, the IC will ensure that SWAT searches the structure for any secondary shooters and/or dangerous traps.

4.37.3 Debriefing:

- A. The Incident Commander will be responsible for conducting a debriefing of all personnel involved in an active shooter situation in timely manner to learn of the successes of the response and identify any needs for improvement.
- B. The Incident Commander will complete an After Action Report in addition to ensuring the submission of the required Offense Reports and supplements by any involved personnel.

4.37.4 Training: All sworn personnel, up to the rank of Colonel, will attend the Active Shooter/Rescue Task Force training course that is provided by the Training Division.

NOTICE

These Standard Operating Procedures are considered law enforcement sensitive and may contain certain information that may be exempt under Florida Public Records Law. Outside or public requests for information from this Standard Operating Procedures Manual must be directed to the Department of Law Enforcement for review and redaction, if necessary, prior to disclosure.

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